(9)

No. 92-1856

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

CITY OF LADUE, *et al.*,

Petitioners,

v.

MARGARET P. GILLEO,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

---

BRIEF OF PEOPLE FOR THE AMERICAN WAY AND AMERICAN JEWISH CONGRESS AS AMICI CURIAE IN SUPPORT OF THE RESPONDENT

Of Counsel:
ELLIOT M. MINCBERG
PEOPLE FOR THE
AMERICAN WAY
2000 M Street, N.W.
Washington, D.C. 20036
(202) 467-4999

MARC D. STERN
AMERICAN JEWISH
CONGRESS
15 East 84th Street
New York, New York 10028
(212) 879-4500

TIMOTHY B. DYK
(Counsel of Record)
BARBARA McDOWELL
DAVID J. SCHENCK

JONES, DAY, REAVIS
& POGUE
1450 G Street, N.W.
Washington, D.C. 20005
(202) 879-3939

Counsel for the Amici

37 pp

QUESTION PRESENTED

Whether a city ordinance that prohibits citizens from displaying political and ideological signs on their residential property, while permitting them to display other commercial and non-commercial signs, violates the First Amendment?

TABLE OF CONTENTS

TABLE OF CONTENTS (Cont'd.)

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES (Cont'd.)

TABLE OF AUTHORITIES (Cont'd.)

TABLE OF AUTHORITIES (Cont'd.)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

No. 92-1856

CITY OF LADUE, *et al.*,
Petitioners,

v.

MARGARET P. GILLEO,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

---

BRIEF OF PEOPLE FOR THE AMERICAN WAY AND AMERICAN JEWISH CONGRESS AS AMICI CURIAE IN SUPPORT OF THE RESPONDENT

INTEREST OF THE AMICI*

People for the American Way is a nonpartisan, education-oriented citizens' organization established to promote and protect civil and constitutional rights, including First Amendment freedoms. Founded in 1980 by a group of religious, civic and educational leaders devoted to our nation's heritage of tolerance, pluralism and liberty, People for the American Way now numbers more than 300,000 members nationwide.

---

* Counsel for both petitioners and respondent have consented to the filing of this brief *amici curiae*. Their consents are on file with the Clerk of the Court.

The American Jewish Congress is an organization of American Jews founded in 1918. It is dedicated to the preservation of the civil, political, economic and religious rights of American Jews and all Americans.

These *amici* have filed briefs in this Court in other cases that implicated their members' concerns for protecting First Amendment freedoms. *See, e.g., Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 113 S.Ct. 2217 (1993); *Barnes v. Glen Theatre, Inc.*, 111 S. Ct. 2456 (1991); *United States v. Eichman*, 496 U.S. 310 (1990); *Edwards v. Aguillard*, 482 U.S. 578 (1987). The *amici*'s concern in this case is to assure that Americans remain free to engage in political and ideological speech by displaying signs, posters, banners and other such materials in their yards, on their homes and in their windows. While a city reasonably may regulate the size, number and placement of these signs in order to promote safety and aesthetics, the city cannot, consistent with the First Amendment, impose an absolute ban on these signs, as did the City of Ladue. It is particularly impermissible for a city to prohibit political or ideological signs while, as here, permitting certain commercial signs as well as non-commercial signs that are not political or ideological.

SUMMARY OF THE ARGUMENT

In early 1991, Margaret Gilleo posted a single 8-1/2-by-11-inch sign in the second-story window of her home in Ladue, Missouri, that read "FOR PEACE IN THE GULF." Ms. Gilleo thereby violated the City of Ladue's newly enacted sign ordinance, which prohibits the display of any "sign," "insignia" or "banner" on any residential property that "publicizes an . . . activity, opinion, person, institution [or] organization." The City had earlier construed a predecessor ordinance to bar Ms. Gilleo from placing a sign in her yard that urged persons to "CALL CONGRESS NOW" about the Persian Gulf situation.

The Ladue sign ordinance does not, however, ban all signs from the residential property of Ladue. Citizens are free to display "residence identification signs" as well as "For Sale" and

"For Rent" signs in their yards and windows. Moreover, while citizens cannot display signs at their homes concerning any political, religious or social activities (or many commercial activities) that may be taking place there, no such prohibition applies to schools or churches, or to businesses in the commercial and industrial areas of Ladue. The ordinance thus expressly discriminates on the basis of content against political and ideological speech. It also discriminates against the speech of individual citizens, and in favor of the speech of educational, religious and business institutions.

The sign ordinance violates the First Amendment right of Ms. Gilleo and other citizens of Ladue to engage in a venerable form of political speech on their own residential property. The ordinance cannot, as petitioners suggest, be justified as a valid time, place or manner regulation. The ordinance is not content-neutral, but instead by its terms favors certain speech on the basis of its content. Nor is the ordinance narrowly tailored to serve the City's asserted interests in preventing the aesthetic and safety problems that may be caused by sign proliferation. Those interests can be adequately served merely by regulating the number, size and placement of signs on residential property, rather than by banning political, ideological and many other types of signs entirely. Furthermore, because the ordinance eliminates a medium of expression that is singularly inexpensive, efficient and effective for conveying political and ideological views, the ordinance does not leave open ample alternative channels of communication.

As a facially content-based restriction on political speech, therefore, the Ladue sign ordinance is subject to the most exacting scrutiny. It is not among those rare laws that can survive such scrutiny. The aesthetic and safety interests that purportedly motivated the sign ordinance, while more than trivial, are not the sorts of interests that this Court has ever suggested are compelling. An absolute prohibition against most categories of signs on residential property is not, moreover, essential to serve those aesthetic and safety interests. The Court of Appeals thus

correctly held that the sign ordinance violates the First Amendment.

ARGUMENT

THE LADUE SIGN ORDINANCE VIOLATES THE FIRST AMENDMENT BY PROHIBITING CITIZENS FROM EXPRESSING THEIR OWN POLITICAL AND IDEOLOGICAL VIEWS ON THEIR OWN PROPERTY

A. This Case Implicates Core First Amendment Concerns

This is a case in which the individual's claim to First Amendment protection is at its zenith. The City of Ladue is seeking to prohibit its citizens from engaging in speech on public issues, which "has always rested on the highest rung of the hierarchy of First Amendment values." *Carey v. Brown*, 447 U.S. 455, 467 (1980). The prohibition is directed at a time-honored form of communication -- outdoor signs, posters and banners -- that is "virtually pure speech," rather than speech combined with conduct. *Arlington County Republican Comm. v. Arlington County*, 983 F.2d 587, 593 (4th Cir. 1993) (quoting *Baldwin v. Redwood City*, 540 F.2d 1360, 1366 (9th Cir. 1976), *cert. denied*, 431 U.S. 913 (1977)). Moreover, citizens are being barred from engaging in this pure political speech on their own residential property -- where, as this Court and the lower courts have recognized, the government's authority to interfere with a citizen's exercise of First Amendment rights is exceedingly limited. *See, e.g., Linmark Assocs. v. Township of Willingboro*, 431 U.S. 85 (1977); *Spence v. Washington*, 418 U.S. 405 (1974) (per curiam); *cf. Members of City Council of City of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 811 (1984) (recognizing the significance under the First Amendment of "[t]he private citizen's interest in controlling the use of his own property").

1. The Ladue Sign Ordinance Strikes At Political And Ideological Speech At The Heart Of The First Amendment's Protections

This Court has repeatedly observed that "the First Amendment reflects a 'profound national commitment' to the principle that 'debate on public issues should be uninhibited, robust, and wide open,' and ha[s] consistently commented on the central importance of protecting speech on public issues." *Boos v. Barry*, 485 U.S. 312, 318 (1988) (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964)). This is because "[s]peech concerning public affairs is more than self expression; it is the essence of self-government." *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 913 (1982) (quoting *Garrison v. Louisiana*, 379 U.S. 64, 74-75 (1964)). The Court has thus emphasized that, by "limit[ing] the means by which [persons] may participate in the public debate on . . . controversial issues of national interest and importance," the government "strikes at the heart of the freedom to speak." *Consolidated Edison Co. v. Public Serv. Comm'n*, 447 U.S. 530, 535 (1980).[1]

---

[1] Contrary to petitioners' suggestion (*e.g.*, Br. for Pet'rs at 33), the Court's recent decision in *City of Cincinnati v. Discovery Network, Inc.*, 113 S.Ct. 1505 (1993), does not even suggest that political and ideological speech is not still entitled to the highest degree of First Amendment protection. Indeed, the Court in *Discovery Network* reaffirmed the primacy of noncommercial speech, while acknowledging that commercial speech also has considerable value. *See* 113 S. Ct. at 1511-14; *see also id.* at 1521 (Blackmun, J., concurring) (expressing hope that "the Court *ultimately* will . . . afford[] full protection for truthful, noncoercive commercial speech about lawful activities") (emphasis added). Nothing in *Discovery Network* suggests that a city can discriminate, as Ladue has here, *against* political and ideological speech, and in favor of commercial speech, without some truly compelling justification. *See Outdoor Sys., Inc. v. City of Mesa*, 997 F.2d 604, 610 (9th Cir. 1993) (*Discovery Network* did not alter "commercial-non-commercial analytical distinction" with respect to billboard regulation).

The Ladue sign ordinance does precisely that. The ordinance expressly prohibits citizens from displaying any "sign," "banne[r]," "insignia" or similar object on their residential property that "publicizes an . . . activity, opinion, person, institution [or] organization." Chapter 35, § 35-1 (J.A. 120). The ordinance also forbids all political and ideological signs, while allowing certain commercial signs, in the commercial and industrial districts of Ladue. The City of Ladue has construed the ordinance as prohibiting Ms. Gilleo from expressing her views on the Persian Gulf War by placing an 8-1/2-by-11-inch sign stating "FOR PEACE IN THE GULF" in a second-story window of her home. (J.A. 188). The City construed a similar predecessor ordinance to bar Ms. Gilleo from maintaining a yard sign that read "SAY NO TO WAR IN THE PERSIAN GULF/CALL CONGRESS NOW." (J.A. 23-24).

A citizen of Ladue is, therefore, absolutely prohibited from engaging in political or ideological expression on his residential property by means of "'[t]he outdoor sign or symbol'" – "'a venerable medium for expressing political, social and commercial ideas'" that has "'played a prominent role throughout American history, rallying support for political and social causes.'" *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 501 (1981) (plurality opinion) (quoting lower court dissenting opinion). A variety of outdoor signs and symbols, many of which would be at risk under the Ladue ordinance, confirm the enduring vitality of this medium of expression: the broadsides that called upon Americans of an earlier era to join the cause of liberty; the red, white and blue banners and bunting that Americans have long utilized both to endorse and to condemn our nation's policies; the gold and blue stars that families of U.S. military personnel proudly displayed in the front windows of their homes during World War II; the yellow ribbons and "Welcome Home" signs that have more recently celebrated the release of Americans held hostage in foreign lands; the colorful yard signs that spring up during election season, belying assertions that we are a politically apathetic people.

Yet, the City of Ladue would seem to tolerate little, if any, of this political discourse, just as the City would not tolerate Ms. Gilleo's "FOR PEACE IN THE GULF" sign. The City's ban on this vital means of political and ideological expression thus "strikes at the heart of [its citizens'] freedom to speak." *Consolidated Edison*, 447 U.S. at 535.

The Ladue sign ordinance does not, of course, suppress only political and ideological speech. The ordinance also reaches many other signs that are common in modern suburbia, such as "It's a Girl," "Happy Holidays," "Go Cardinals," "Garage Sale Saturday" and "Neighborhood Crime Watch." The ordinance appears to prohibit a homeowner even from attempting to protect his privacy by posting a "No Solicitors" or "Do Not Disturb" sign on his front door.[2]

2. The Ladue Sign Ordinance Prohibits Citizens From Engaging In Political And Ideological Speech On Their Own Residential Property

This Court has often explained that "the standards by which limitations on speech must be evaluated 'differ depending on the character of the property at issue.'" *Frisby v. Schultz*, 487 U.S. 474, 479 (1988) (quoting *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 44 (1983)); *accord Schad v. Borough of Mount Ephraim*, 452 U.S. 61, 75 (1981). A restriction that, like the Ladue sign ordinance, prevents persons from engaging in First Amendment activity on their own property must meet a particularly exacting standard.

---

[2] The Court has recognized that such signs are a particularly appropriate means of reconciling the homeowner's privacy interests with the First Amendment rights of door-to-door canvassers, leafletters and solicitors. *E.g.*, *Village of Schaumburg v. Citizens for a Better Env't*, 444 U.S. 620, 639 (1980). Yet, while contending that Ms. Gilleo should personally confront her neighbors at their homes rather than post a sign in her own yard or window (Br. for Pet'rs at 40-41), the City would deny those neighbors the most effective means of avoiding such an encounter.

In *Consolidated Edison*, for example, the Court held that the New York Public Services Commission could not bar a utility company from enclosing materials in its billing envelopes that expressed its views on nuclear power and other public controversies. 447 U.S. at 533-44. The Court emphasized that "Consolidated Edison has not asked to use the offices of the [Public Services] Commission as a forum from which to promulgate its views," but instead "seeks merely to utilize its own billing envelopes to promulgate its views on controversial issues of public policy." *Id.* at 539-40. Accordingly, said the Court, "the Commission's attempt to restrict the free expression of a private party cannot be upheld by reliance upon precedent that rests on the special interests of a government in overseeing the use of its property." *Id.* at 540.

Similarly, in overturning an individual's conviction in *Spence* for hanging an American flag decorated with a peace symbol from the window of his apartment, the Court noted no fewer than three times that the activity occurred on private property, 418 U.S. at 406, 409, 411, rather than "in an environment over which the State by necessity must have certain supervisory powers unrelated to expression." *Id.* at 411. Indeed, the Court specifically observed that the fact that the decorated flag had been displayed on private property was one of "[a] number of factors [that] are important in the instant case." *Id.* at 408. It was therefore not "a case that might be analyzed in terms of reasonable time, place, or manner restraints on access to a public area." *Id.* at 409; *cf. Wooley v. Maynard*, 430 U.S. 705, 713 (1977) (a citizen has a First Amendment right not to be compelled to display the state's ideological message "on his private property").[3]

---

[3] Other cases have also concluded that the individual's right to engage in First Amendment activity applies with particular force at his own home. In invalidating an ordinance barring door-to-door leafletting in *Martin v. City of Struthers*, 318 U.S. 141 (1943), the Court considered the First Amendment rights of both homeowners and leafletters. The Court explained that the ordinance improperly "substitute[d] the judgment of the community for the judgment of the individual householder," because the leafletter would be subject "to criminal punishment for annoying the person on whom he calls, even though the recipient of the literature distributed is in fact glad to receive it." *Id.* at 144. The Court emphasized that the government should "leav[e] the decision as to whether distributors of literature may lawfully call at a home where it belongs -- with the homeowner himself." *Id.* at 148; *see also, e.g., Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 74-75 (1983); *Lamont v. Postmaster General*, 381 U.S. 301 (1965); *Stanley v. Georgia*, 394 U.S. 557 (1969). An individual's right to express his views on his own property is, moreover, analogous to an individual's right to express his views on his own person. *See, e.g., Cohen v. California*, 403 U.S. 15 (1971); *Tinker v. Des Moines Indep. Comm. School Dist.*, 393 U.S. 503 (1969).

The decisions of this Court and the lower courts in cases involving First Amendment challenges to municipal sign regulations evince a particular concern with allowing individuals to express themselves on their own residential property. In *Linmark Associates*, the Court invalidated an ordinance that prohibited homeowners from posting real estate "For Sale" and "Sold" signs. 431 U.S. at 91-98. The Court explained that an individual's other alternatives for selling his property, such as newspaper advertising, involved "less autonomy" than "a 'For Sale' sign in front of the house to be sold." *Id.* at 93.

In *Vincent*, while upholding a Los Angeles ordinance that prohibited the posting of signs on public property, the Court indicated that a ban against signs on private property would present more significant constitutional issues, given "[t]he private citizen's interest in controlling the use of his own property." 466 U.S. at 811. Moreover, in concluding that the ordinance did not unduly interfere with citizens' right to engage in political speech, the Court emphasized that citizens remained free to display their signs on private property. *Id.* at 795, 812. As the Court observed, "by not extending the ban to [private property], a significant opportunity to communicate by means of temporary signs is preserved." *Id.* at 811.

The lower courts have consistently held that, whatever a city's authority may be to regulate signs on public property, a city cannot prevent its citizens from displaying signs on their own residential property. For example, while this Court did not have occasion in *Metromedia* to address the constitutionality of an ordinance that would prohibit citizens from placing political signs in their own yards, the California Supreme Court did consider the issue in the opinion ultimately reviewed by this Court. *Metromedia, Inc. v. City of San Diego*, 610 P.2d 407 (Cal. 1980), *rev'd*, 453 U.S. 490 (1981). The California Supreme Court construed the San Diego ordinance at issue as permitting "a small sign placed in one's front yard proclaiming a political or religious message" -- a construction that the court deemed necessary in order "to avoid the risk of unconstitutional overbreadth which a broad construction of the ordinance might entail." *Id.* at 410 n.2; *see also Metromedia*, 453 U.S. at 494 n.2 (noting California Supreme Court's limiting construction).

Other lower courts have uniformly invalidated municipal ordinances that restrict an individual's right to display a political or ideological sign on his own residential property. *E.g.*, *Arlington County Republican Comm.*, 983 F.2d at 595 (explaining that a restriction on political yard signs "infringes on the rights of two groups: the candidates *and* the homeowners," because "[h]omeowners also express their views by posting political signs in their yard"); *Matthews v. Town of Needham*, 764 F.2d 58, 61 (1st Cir. 1985) (emphasizing that the sign ordinance at issue, unlike the ordinance in *Vincent*, "touches on private property" and thus was invalid); *Baldwin*, 540 F.2d at 1373 (recognizing "the right of residents to express their own views" on political issues by displaying signs in their yards); *State v. Miller*, 416 A.2d 821, 827 (N.J. 1980) ("ordinances which exclude political signs from residential districts have uniformly been held unconstitutional"); *cf. State v. Hodgkiss*, 565 A.2d 1059, 1062 (N.H. 1989) (Souter, J.) (observing that restrictions on posting signs on trees and poles

located on private property could present "constitutional problems").[4]

This is not, therefore, a case involving "the law of billboards," and the "unique set of problems" presented by such "large, immobile, and permanent structure[s]" on commercial property. *Metromedia*, 453 U.S. at 501-02. Nor is it a case involving a municipality's management of its own property. *See Vincent*, 466 U.S. at 813-15. It is, instead, a case about an individual homeowner's right to place a single sign in her own yard or in her own window to express her views on a controversial public issue. None of this Court's authorities suggest that the City of Ladue's absolute prohibition against such signs can be squared with the First Amendment.[5]

---

[4] *See also, e.g., Whitton v. City of Gladstone*, 1993 U.S. Dist. LEXIS 13026, *17, *20 (W.D. Mo. Sept. 17, 1993) ("that Gladstone attempts to regulate a resident's exercise of speech in his or her own yard demands that the court apply more exacting, not less scrutiny than it would in analyzing a content-based regulation in public forum cases"); *Loftus v. Township of Lawrence Park*, 764 F. Supp. 354 (W.D. Pa. 1991); *Runyon v. Fasi*, 762 F. Supp. 280 (D. Haw. 1991); *Tauber v. Town of Longmeadow*, 695 F. Supp. 1358 (D. Mass. 1988); *Metromedia, Inc. v. Mayor and City Council of Baltimore*, 538 F. Supp. 1183 (D. Md. 1982); *Martin v. Wray*, 473 F. Supp. 1131 (E.D. Wis. 1979); *Orazio v. Town of North Hempstead*, 426 F. Supp. 1144 (E.D.N.Y. 1977); *Pace v. Village of Walton Hills*, 238 N.E.2d 542 (Ohio 1968); *cf. Collier v. City of Tacoma*, 854 P.2d 1046 (Wash. 1993) (invalidating restrictions on political signs under free speech provision of Washington Constitution).

[5] The petitioners and their *amici* suggest that, if the Ladue sign ordinance is held to be unconstitutional, then the Highway Beautification Act of 1965, 23 U.S.C. § 131 (1988), must also be presumed to be unconstitutional. *See* Br. for Pet'rs at 48-50; Br. *Amicus Curiae* of Hawaii *et al.* at 3-14. These concerns are, at best, premature. It is questionable whether the Act's restrictions on "outdoor advertising signs, displays, and devices," 23 U.S.C. § 131(a) (1988), encompass the small political and ideological signs on residential property that are at issue in

B. The Ladue Sign Ordinance Cannot Withstand First Amendment Scrutiny As A Content-Neutral "Time, Place And Manner" Regulation

The petitioners attempt to justify the Ladue sign ordinance as a valid "time, place and manner" regulation notwithstanding that the ordinance prohibits citizens from posting political or ideological signs at *any* time, in *any* place on their residential property, and in *any* manner within the City of Ladue. *Cf. United States v. Grace*, 461 U.S. 171, 178 (1983) (contrasting "reasonable time, place, and manner regulations" with "an absolute prohibition on a particular type of expression"). However, even applying the standard that petitioners agree is applicable to the analysis of time, place and manner regulations, the ordinance cannot be sustained.

This Court has stated that a time, place and manner regulation can withstand First Amendment scrutiny only if three criteria are satisfied: the regulation must be "'content-neutral,'" the regulation must be "'narrowly tailored to serve a significant government interest,'" and the regulation must "'leave open ample alternative channels of communication.'" *Frisby*, 487 U.S. at 481 (quoting *Perry Educ. Ass'n*, 460 U.S. at 45). The Ladue sign ordinance fails each of these requirements.

---

this case.

Moreover, the Act prohibits only "outdoor advertising" that is outside an area zoned for business or industrial use, visible from the highway and, except in rural areas, within 660 feet of the right-of-way. 23 U.S.C. § 131(b), (d) (1988). No evidence has been presented in this case as to whether the Act would, like the Ladue sign ordinance, entirely prohibit citizens who reside near interstate or primary highways from publicly displaying signs anywhere on their residential property. Of course, as Justice White observed in *Metromedia*, "[w]hether, in fact, the distinction [between the Act and a local sign ordinance] is constitutionally significant can only be determined on the basis of a record establishing the actual effect of the Act on [signs] conveying noncommercial messages." 453 U.S. at 515 n.20.

1. The Ladue Sign Ordinance Is Not Content-Neutral, But Instead Discriminates Against Political And Ideological Speech

"The 'First Amendment's hostility to content-based regulation extends . . . to prohibition of public discussion of an entire topic.'" *Boos v. Barry*, 485 U.S. 312, 319 (1988) (quoting *Consolidated Edison*, 447 U.S. at 537). The Ladue sign ordinance is content-based because citizens are prohibited from engaging in speech on multiple "entire topic[s]" -- including any conceivable political or ideological issue -- through the medium of signs in their yards, on their houses and in their windows. At the same time, the City permits signs on certain favored commercial and non-commercial topics. Indeed, the sign ordinance discriminates not only against particular speech, but also against particular speakers, because the speech of schools, churches and other institutions is favored over the speech of ordinary citizens.

The Ladue sign ordinance, while generally prohibiting a homeowner from displaying any "signs," "insignias," "banners," "pennants" and other such materials on his residential property, contains two express exceptions: "residence identification signs" and "[g]round signs advertising the sale or rental of real property." Chapter 35, §§ 35-4 to 35-10 (J.A. 121-22, 126).[6] Nothing in the ordinance appears to preclude a homeowner from posting a "residence identification sign" that identifies his residence as that of a physician, a lawyer, a certified public accountant or other professional, and thereby advertising the occupation that he pursues either at the residence or elsewhere. The ordinance thus permits a citizen to display certain categories

---

[6] Real estate signs may be up to six square feet in size, which appears to have been approximately the size of Ms. Gilleo's yard sign (*see* J.A. 194). Residence identification signs may be up to one square foot in size, and thus larger than Ms. Gilleo's window sign (*see Gilleo v. City of Ladue*, 986 F.2d 1180, 1182 (8th Cir. 1993)). Chapter 35, §§ 35-4 to 35-10 (J.A. 121-22, 126).

of commercial and non-commercial signs on his residential property -- *e.g.*, "House for Sale," "House for Rent," "Bill Jones, C.P.A.," "The Smith Residence" -- while absolutely prohibiting a citizen from displaying any political or ideological signs, or signs on other commercial or non-commercial topics.[7]

The Ladue sign ordinance also favors certain speech of businesses and others enterprises located in commercial or industrial areas over the speech of individual homeowners. Those who own or rent property in areas zoned for commercial or industrial use may display signs that "directly relate[] to the activity taking place on the property." Br. for Pet'rs at 28. But citizens cannot display signs on their residential property that relate to political, religious, social or certain commercial activity taking place on the property -- activity such as "meet the candidate" coffees, meetings of neighborhood improvement associations, block parties or garage sales. Accordingly, if Ms. Gilleo were to coordinate a "Peace in the Gulf" Committee out of her residence in Ladue, she could not display a sign in her yard announcing the Committee's activities. In contrast, if the U.S. Army were to operate a recruiting office in the business district of Ladue, it could post signs urging young people to sign up to wage war in the Gulf. Chapter 35, § 35-4 (J.A. 121-22).

Moreover, the Ladue sign ordinance permits churches, other religious institutions and schools located in residential districts to make more extensive use of signs than can individual homeowners. Each church, religious institution or school is allowed

---

[7] It makes no difference that the City of Ladue was foreclosed by Missouri law from banning real estate signs, *see* Mo. Rev. Stat. § 67.317 -- a result that may well have been compelled in any event by this Court's decision in *Linmark Associates*, 431 U.S. at 94-97. The City of Ladue still had the choice whether to treat political and ideological signs more favorably, as favorably or less favorably than real estate signs. The City chose to discriminate against political and ideological speech, not only in favor of real estate signs, but also in favor of any commercial or non-commercial message that might be displayed on a "residence identification sign."

one "identification sign," one permanent bulletin board or ground sign, and one "temporary sign" that can remain in place for up to sixty days. Chapter 35, § 35-5 (J.A. 122-23). These signs may contain "the name of such church, religious institution, or school, its services, activities or other functions." *Id.* There is nothing in the ordinance to preclude a church or other religious institution from displaying a sign announcing, and thereby endorsing, political and ideological activities. It would hardly be unprecedented for a church or religious institution to advertise, for example, "Mass for the Unborn," "Prayer Vigil for Peace in the Gulf," "Sunday's Sermon: Restoring God to Our Schools," or an appearance by a political candidate favored by parishioners. To be sure, religious and educational institutions are constrained in their ability to engage in political and ideological speech, because that speech must to some extent relate to their "services, activities or other functions." But they still have considerably greater freedom to convey political and ideological messages than do ordinary citizens. Of course, these institutions are also allowed to post signs on other topics -- *e.g.*, rummage sales, potluck dinners and casino nights -- while homeowners are barred from posting signs announcing their own social activities and most commercial activities.

The petitioners contend that the ordinance is content neutral -- even though it discriminates by its terms in favor of particular topics of speech -- because this discrimination has a "content-neutral explanation." Br. for Pet'rs at 24. But the Court squarely rejected such an argument just last Term in *City of Cincinnati v. Discovery Network, Inc.*, 113 S. Ct. 1505, 1516-17 (1993). The City of Cincinnati in that case, much like the City of Ladue here, sought to sustain a newsrack ordinance that expressly accorded different treatment to different categories of speech, arguing that "the *justification* for the regulation is content neutral" because "the interests in safety and esthetics that it serves are entirely unrelated to the content of respondents' publications." *Id.* at 1516. The Court concluded, however, that the Cincinnati ordinance was plainly content-based, whether or not its drafters

had intended to suppress discussion of particular topics or ideas. As the Court explained:

> Regardless of the *mens rea* of the city, it has enacted a sweeping ban on the use of newsracks that distribute "commercial handbills," but not "newspapers." Under the city's newsrack policy, whether any particular newsrack falls within the ban is determined by the content of the publication resting inside that newsrack. Thus by any commonsense understanding of the term, the ban in this case is "content-based."

Id. at 1516-17; *see also Simon & Schuster, Inc. v. Members of New York State Crime Victims Bd.*, 112 S. Ct. 501, 509 (1991).[8]

So, too, whether or not any particular sign falls within the City of Ladue's ban is determined by the content of that sign. If a sign carries a political or ideological message, then the sign is absolutely forbidden. If, however, the sign concerns the sale or rental of real estate, or the identity of the residents of the house, or the activities of a church or school, or the products or services offered on-site by a business in a commercial or industrial zone, then the sign may be permitted. It would be contrary to "any commonsense understanding," therefore, to treat the Ladue sign ordinance as anything other than content-based.[9]

---

[8] This case, like *Discovery Network* and *Simon & Schuster* and unlike *Ward v. Rock Against Racism*, 491 U.S. 781 (1989), concerns a regulation that expressly treats speech on certain topics differently from speech on other topics. In contrast, *Ward* involved an ordinance that was neutral on its face, applying to all speakers who used the Central Park Bandshell, and that, at most, may have incidentally affected some speech (*e.g.*, rock concerts) more than others (*e.g.*, operas).

[9] The petitioners suggest that, if the Ladue sign ordinance cannot be upheld as a time, place and manner regulation because it is content-based, then the ordinance might still be upheld under the "secondary effects" doctrine. *See* Br. for Pet'rs at 42-44. But the Court has applied

2. The Ladue Sign Ordinance Is Not Narrowly Tailored To Address The City's Aesthetic And Safety Interests, But Instead Imposes An Absolute Ban On Political And Ideological Signs On Residential Property

The Ladue sign ordinance fails to satisfy the standard for a valid time, place and manner regulation for a second reason: The ordinance is not "narrowly tailored" to advance a "significant government interest" in aesthetics and safety. *Frisby*, 487 U.S. at 481 (quoting *Perry Educ. Ass'n*, 460 U.S. at 45).

In order to assess whether the Ladue sign ordinance is sufficiently "narrowly tailored," one must first ascertain the interest that it is designed to serve. The petitioners assert that the ordinance is intended to address the aesthetic and safety concerns

---

speech only in one narrow category of cases: cases challenging municipal zoning ordinances governing the location of businesses purveying sexually explicit materials. *See Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres, Inc.*, 427 U.S. 50 (1976). The Court has not applied this doctrine to uphold content-based regulations of other types of expression.

Moreover, the Court has allowed the secondary effects doctrine to be used only to channel a particular medium of speech to a particular location, not to ban the medium entirely. *Cf. Shad*, 452 U.S. at 73-74 (declining to apply secondary effects doctrine to citywide prohibition of live entertainment). The Ladue sign ordinance, however, imposes an absolute prohibition on the display of political and ideological signs on residential property throughout the City.

Finally, as the Court made clear in *Renton*, a content-based regulation can pass constitutional muster under the secondary effects doctrine only if the regulation is "narrowly tailored" to reach only speech that produces the unwanted secondary effect and "allows for reasonable alternative avenues of communication." 475 U.S. at 52-53. As explained in the text, the Ladue sign ordinance is not narrowly tailored to serve the City's interest in preventing sign proliferation and "visual blight." *See infra* pp. 17-22. Nor does the ordinance leave open sufficient "alternative avenues of communication." *See infra* pp. 22-26.

ordinance is intended to address the aesthetic and safety concerns that might be posed by "the proliferation of signs in Ladue and the resulting blight." Br. for Pet'rs at 3. They do not appear to suggest, therefore, that allowing citizens to display a single small sign in their yard or window would itself constitute "blight."[10] They appear, instead, to be concerned with the uncontrolled multiplication of signs on a given piece of property -- the sort of visual blight that motivated the prohibition against signs on public property in *Vincent*. However, when the property on which the signs would be displayed is private residential property rather than public property, there is no reason to conclude that visual blight cannot be prevented by limiting the number, size or placement of signs, rather than by prohibiting them.

Indeed, the City of Ladue has implicitly conceded as much in its regulation of other sorts of signs. The City did not address the aesthetic and safety concerns posed by commercial signs in its business and industrial districts by banning these signs entirely. Instead, the City chose to regulate the number of signs on any piece of commercial property, the size and location of those signs, and even the type of lighting used on the signs. *See* Chapter 35, §§ 35-6 to 35-9, 35-11 (J.A. 123-27). An accommodation was thus achieved among the City's interest in preventing the unchecked proliferation of commercial signs, local business owners' interest in publicizing their goods and services, and consumers' interest in receiving that information.

---

[10] Curiously, petitioners assert that, while the sign ordinance expressly prohibits all "banners" and "pennants" on residential property, citizens are free to display an unlimited number of "flags" on their homes and in their yards, so long as "they are made of fabric and are not in the shape of a banner or pennant." Br. for Pet'rs at 40. No such distinction is contained in the ordinance itself. The petitioners' litigating position suggests, at least, that the City's concept of "blight" is somewhat limited, and requires something more than a single colorful foreign object on every residential lot in Ladue. Petitioners have not explained why "flags" could be assumed to pose any lesser aesthetic or safety threat than "banners," "pennants" or "signs."

The City of Ladue abandoned this regulatory approach, however, with respect to political and ideological signs. The City did not seek to advance its aesthetic and safety interests by limiting the number of signs that a citizen could display on his residential property. Nor did the City regulate the size of the signs, the distance of the signs from the street, or the duration that the signs could remain in place. Accordingly, rather than adopting a regulatory scheme that sought to accommodate the First Amendment interests of its citizens in engaging in public debate through political and ideological signs on their residential property, the City simply banned all such signs. This prohibition is far more extensive than necessary to address any significant aesthetic and safety interests of the City. *See Discovery Network*, 113 S. Ct. at 1510, 1517 (Cincinnati's failure to address its aesthetic and safety concerns about newsracks by "regulating their size, shape, appearance, or number" bore on whether its ban on commercial newsracks was narrowly tailored).

The petitioners erroneously suggest that *Vincent* compels the conclusion that the sign ordinance is narrowly tailored. *See* Br. for Pet'rs at 38. They invoke the Court's statement in *Vincent* that banning all signs on public property "responds precisely to the substantive problem which legitimately concerns the City," because "the substantive evil -- visual blight -- is not merely a possible byproduct of the activity, but is created by the medium of expression itself." 466 U.S. at 810. But petitioners are attempting to extend the Court's statement in *Vincent* to circumstances entirely unlike those presented in that case.

The district court in *Vincent* had made a specific finding that "the large number of illegally posted signs 'constitute a clutter and visual blight.'" *Id.* at 794 (quoting district court finding). No such finding has been made here. Nor can the district court's finding in *Vincent* be assumed to apply to this case, which involves signs on private residential property, not on public property. The Court recognized in *Vincent* that no effective means existed to control the number of signs on public property -- short of imposing an outright ban -- because all speakers could claim an equal right to post signs on the property. *Id.* at 816; *cf.*

Heffron v. International Soc'y for Krishna Consciousness, Inc., 452 U.S. 640, 652-54 (1981).

A different situation exists as to signs on private residential property. As the *Vincent* Court observed, "private property owners' esthetic concerns will keep the posting of signs on their property within reasonable bounds." *Id.* at 811; *see Metromedia*, 610 P.2d at 410 n.2 (construing San Diego sign ordinance to permit "noncommercial signs that present no significant aesthetic blight or traffic hazard," such as "a small sign placed in one's front yard proclaiming a political or religious message"). A city can ensure that these "reasonable bounds" are maintained, moreover, by limiting the number of signs that a homeowner may display, the size of the signs, or where on the property the signs may be placed. A number of lower courts have thus recognized since *Vincent* that efforts to ban all political and ideological signs on private residential property are not narrowly tailored, because the city's aesthetic interest can be fully satisfied by relying on homeowners' own interest in maintaining the appearance of their property, coupled with reasonable regulations as to the number, size or placement of signs at any particular residence.[11]

This case is not, therefore, like *Vincent*, where "the medium of expression itself" was found to constitute "visual blight" because of the uncontrollable proliferation of signs on public property. 466 U.S. at 810. Instead, given that signs on private residential property can be adequately controlled in number and size to satisfy aesthetic concerns (or so this Court assumed in *Vincent*, and no court has found to the contrary), "visual blight" is, at most, "merely a possible byproduct" of such signs. *Id.* It therefore cannot be said that the Ladue sign ordinance, as opposed to the ordinance in *Vincent*, is a precisely tailored means of

[11] *See, e.g., Arlington County Republican Comm.*, 983 F.2d at 594; *Whitton*, 1993 U.S. Dist. LEXIS 13026, at *18-20; *Runyon*, 762 F. Supp. at 284.

addressing "the substantive evil" of sign proliferation and visual blight. *Id.*[12]

To be sure, to the extent that the City's interest is not to prevent what could legitimately be considered "visual blight," but instead is simply to prevent any sign (except approved signs, such as real estate signs) from being displayed on the residential property of Ladue, then only an absolute prohibition could suffice. However, while the City may have a substantial aesthetic interest in preventing visual blight, the City has no similarly substantial interest in preventing citizens from posting a single small sign in their yards or in their windows, especially given the citizens' countervailing First Amendment interest in expressing their political and ideological views. The City would then be encroaching too far into those "matters of taste and style" that the Constitution properly leaves "so largely to the individual." *Cohen v. California*, 403 U.S. 15, 25 (1971). For just as "one man's vulgarity is another's lyric," *id.*, one homeowner's eyesore is

[12] Nothing in the affidavit of petitioners' expert, Malcolm C. Drummond, suggests that sign regulation, rather than prohibition, would not adequately address the City's aesthetic interests. Rather, Mr. Drummond stated:

> [M]any municipalities in St. Louis County which do not strictly limit the erection of signs frequently experience a proliferation of yard signs and placards and temporary and permanent signs in the public rights-of-way[.]

Drummond Aff. ¶ 81 (J.A. 154). Mr. Drummond does not, therefore, state that a municipality could not control sign proliferation by "strictly limit[ing]" to one or two the number of signs on a residential lot and by prohibiting signs in "public rights-of-way." Mr. Drummond does not even suggest, moreover, that any "visual blight" is caused by window signs like the one posted by Ms. Gilleo. *Cf. International Soc'y for Krishna Consciousness, Inc. v. Lee*, 112 S. Ct. 2711, 2714 (1992) (opinion of O'Connor, J.) (noting that the government had offered no record evidence to support prohibition on leafletting alone, but instead had focused only on problems of leafletting in connection with solicitation).

another's Guernica. *Cf. International Soc'y for Krishna Consciousness, Inc. v. Lee*, 112 S. Ct. 2711, 2719 (1992) (opinion of Kennedy, J.) ("The First Amendment is often inconvenient. But that is besides the point. Inconvenience does not absolve the government of its obligation to tolerate speech.").[13]

3. The Ladue Sign Ordinance Does Not Leave Citizens Ample Alternatives To Engage In Political And Ideological Speech

The Ladue sign ordinance is not a permissible time, place and manner regulation for the further reason that it does not leave citizens with "ample alternative channels of communication" for expressing their political and ideological views. *Frisby*, 487 U.S. at 481 (quoting *Perry Educ. Ass'n*, 460 U.S. at 45).

This Court and the lower courts have recognized the singular communicative value of a sign on one's residential property. In *Linmark Associates*, 431 U.S. at 93, the Court noted that "serious questions exist" as to whether an ordinance prohibiting "For Sale" and "Sold" signs from being posted on residential property left open sufficient alternative means of communication. The Court explained:

---

[13] The petitioners do not seriously press their asserted "safety" interest before this Court. Of course, if any real risk exists that yard or window signs could impair traffic safety, the City may regulate the number, size or position of such signs to minimize any such risk. It appears that the City has found these more narrowly tailored measures to be sufficient to address the presumably similar safety concerns posed by commercial signs, signs at churches, religious institutions and schools, and residential "For Sale" and "For Rent" signs. *See, e.g., International Soc'y for Krishna Consciousness*, 112 S. Ct. at 2720 (opinion of Kennedy, J.) (rejecting Port Authority's "half-hearted" argument that ban on expressive activity was justified by security concerns, where persons engaged in expressive activity were not shown to pose any greater security threat than other persons allowed in airports).

> The options to which sellers realistically are relegated -- primarily newspaper advertising and listing with real estate agents – involve more cost and less autonomy than "For Sale" signs; are less likely to reach persons not deliberately seeking sales information; and may be less effective media for communicating the message that is conveyed by a "For Sale" sign in front of the house to be sold. The alternatives, then, are far from satisfactory.

Id. at 93 (citations omitted).

In *Vincent*, in order to conclude that banning signs on public property would not leave speakers without alternative channels of communication, the Court relied on the district court's finding that candidates may "'post their signs and handbills . . . on private property with the permission of the owners thereof.'" 466 U.S. at 795, 812. The Court explained that "a significant opportunity to communicate by means of temporary signs is preserved" by allowing signs to be displayed on private property. *Id.* at 811.

The lower courts have consistently recognized that "occupants who are prohibited from displaying political signs on their residential premises do not have adequate alternative channels for communicating the messages on these signs." R. Douglass Bond, Note, *Making Sense of Billboard Law: Justifying Prohibitions and Exemptions*, 88 Mich. L. Rev. 2482, 2507 (1990) (citing cases). These decisions suggest a number of reasons why yard and window signs are a particularly effective means of expressing one's political and ideological views.

First, yard and window signs are among the least expensive means of communicating one's opinion on a public issue to neighbors and others passing through the community. *See, e.g., Arlington County Republican Comm.*, 983 F.2d at 595; *Baldwin*, 540 F.2d at 1368. This Court has traditionally expressed particular solicitude for means of expression that are "essential to the poorly financed causes of little people." *Martin v. City of Struthers*, 318 U.S. 141, 146 (1943); *cf. Milk Wagon Drivers Union Local 753 v. Meadowmoor Dairies, Inc.*, 312 U.S. 287,

293 (1941) ("[p]eaceful picketing is the workingman's means of communication").

Second, yard and window signs are a significantly less time-consuming means of political or ideological expression than, for example, distributing handbills at the town center or canvassing door-to-door throughout the community. *See, e.g., Arlington County Republican Comm.*, 983 F.2d at 595. As Justice Brennan has explained:

> [A] message on a sign will typically reach far more people than one on a handbill. The message on a posted sign remains to be seen by passersby as long as it is posted, while a handbill is typically read by a single reader and discarded. Thus, not only must handbills be printed in large quantity, but many hours must be spent distributing them.

Vincent, 466 U.S. at 820 (Brennan, J., dissenting).

As a practical matter, other means of communication, such as leafletting and canvassing, may be foreclosed to many citizens whose time is consumed by work or family obligations. It may also be difficult for many citizens who are elderly or physically disabled to engage in these other means of communication.

Third, a yard or window sign is a particularly effective means of calling attention to local issues and candidates. *See, e.g., Baldwin*, 540 F.2d at 1368; *Collier v. City of Tacoma*, 854 P.2d 1046, 1058 (Wash. 1993). In *State v. Miller*, for example, the New Jersey Supreme Court reversed a homeowner's conviction for violating a municipal sign ordinance. 416 A.2d at 826-27. The defendant had posted a sign in his front yard that read:

> WELCOME!!
> PROSPECTIVE RESIDENTS OF LAWRENCE
> BROOK GLEN THIS RESIDENT
> AND OTHERS OF RIVA AVE.
> WANT TO WELCOME YOU TO THIS
> FLOOD HAZARD AREA
> GOOD LUCK!!
> INFORMATION AVAILABLE

Id. at 823. The court explained that the defendant's yard sign was "the most effective and least expensive way to reach [the defendant's] intended audience – prospective Riva Avenue home purchasers and his neighbors." *Id.* at 827. The court added that, while the defendant might have been able to communicate in person with his neighbors about the issue, "even that would not be a realistic alternative for reaching prospective purchasers of homes in the affected area." *Id.*

The association between the sign, the house and the neighborhood often has communicative value, moreover, regardless of whether the issue under debate is of local, statewide or national interest. It may have special significance that an individual who has a certain kind of house in a certain kind of neighborhood takes a certain political position. For example, if the owner of a large house in an affluent community were to post a sign supporting higher taxes on the wealthy, or if a resident of a historically segregated neighborhood were to post a sign endorsing an African-American candidate, the sign would have meaning beyond the words or graphics within its four corners.

Fourth, yard and window signs are a uniquely non-confrontational means of expressing one's political and ideological views, without intruding upon the privacy of one's neighbors by knocking at their doors, or contacting them by telephone or mail. A sign invites neighbors to engage in debate on public issues, without insisting that they do so. Accordingly, contrary to the petitioners' position, yard and window signs actually promote the

City of Ladue's professed interest in "protect[ing] the privacy interests of its residents." Br. for Pet'rs at 43.

Finally, yard and window signs have special value for the proponents of unpopular opinions and unknown candidates that cannot expect to command the attention of the mass media. As the Washington Supreme Court recently observed, a ban on political signs "inevitably favors certain groups of candidates over others," because "[t]he incumbent, for example, has already acquired name familiarity," while "[t]he underfunded challenger" has not. *Collier*, 854 P.2d at 1053; *see also City of Antioch v. Candidates' Outdoor Graphic Serv.*, 557 F. Supp. 52, 59 (N.D. Cal. 1982); Geoffrey R. Stone, *Fora Americana: Speech in Public Places*, 1974 Sup. Ct. Rev. 233, 257 (signs on public issues are a means for "persons who do not themselves have access to more traditional media facilities" to promulgate their ideas). The members of this Court have recognized that restrictions on a traditional medium of expressions -- such as the yard and window signs in this case -- threaten to silence "more marginal voices" who "lack access to more sophisticated media." *International Soc'y for Krishna Consciousness*, 112 S. Ct. at 2720, 2723 (opinion of Kennedy, J.); *see also id.* at 2727 (opinion of Souter, J.).

In sum, the Ladue sign ordinance fails this Court's standard for permissible time, place and manner regulations on three distinct counts: The sign ordinance is not content-neutral, but instead discriminates against political and ideological speech. The sign ordinance is not narrowly tailored to prevent sign proliferation and visual blight, but instead broadly prohibits any political or ideological sign on any residential property within Ladue. And the sign ordinance does not leave open ample alternative channels of expression, especially for "the poorly financed causes of little people." *Martin*, 318 U.S. at 146.

C. The Ladue Sign Ordinance Cannot Withstand The Strict Scrutiny Mandated Of Content-Based Prohibitions Of Political And Ideological Speech

The Ladue sign ordinance, like the restrictions on political signs near polling places in *Burson v. Freeman*, 112 S. Ct. 1846 (1992), is a "facially content-based restriction on political speech." *Id.* at 1851. The City of Ladue thus "must show that the 'regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end.'" *Id.* (quoting *Perry Educ. Ass'n*, 460 U.S. at 45); *accord Boos*, 485 U.S. at 321. As this Court has observed, "a law rarely survives such scrutiny." *Burson*, 112 S. Ct. at 1852.

The aesthetic and safety interests that the City advances in support of the sign ordinance, while arguably substantial, *see Metromedia*, 453 U.S. at 507, have never been held by this Court to be "compelling." These interests cannot, for example, be equated with the Tennessee's interest in preserving "the right to vote -- a right at the heart of our democracy," which was found sufficiently compelling to justify the far more limited restrictions in *Burson* on political signs in the immediate vicinity of polling places on Election Day. 112 S. Ct. at 1851; *see* Geoffrey R. Stone, *Fora Americana*, 1974 Sup. Ct. Rev. at 258 (explaining that "an absolute ban on [political signs on private property] would be constitutionally impermissible"). Indeed, while the petitioners baldly assert that the sign ordinance serves "compelling state interests" (Br. for Pet'rs at 47), they do not offer *any* case from *any* court that supports that assertion. The lower courts have consistently held that aesthetics and safety are not compelling interests that could justify prohibitions on political and ideological signs on residential property.[14]

---

[14] *See, e.g.*, *Whitton*, 1993 U.S. Dist. LEXIS 13026, at *18; *Loftus*, 764 F. Supp. at 361; *Ross v. Goshi*, 351 F. Supp. 949, 953 (D. Haw. 1972); *Collier*, 854 P.2d at 1054-55; *City of Euclid v. Mabel*, 484 N.E.2d 249, 253-54 (Ohio App. 1984), *cert. denied*, 474 U.S. 826 (1985); *People v. Middlemark*, 420 N.Y.S.2d 151, 153-54 (Dist. Ct. 1979).

Moreover, even in circumstances where the government can assert a compelling interest in regulating speech, the government still "must demonstrate that its law is necessary to serve the asserted interest" and is "narrowly drawn." *Burson*, 112 S. Ct. at 1851, 1852. The City of Ladue cannot make such a showing here for the reasons explained above. *See supra* pp. 17-22. This Court recognized in *Discovery Network* that the city's failure to address its aesthetic and safety concerns about newsracks "by regulating their size, shape, appearance, or number," rather than by banning commercial newsracks entirely, demonstrated that the ban was not sufficiently narrowly tailored to withstand scrutiny even under the intermediate standard of review applicable to commercial speech. 113 S. Ct. at 1510 & n.13. Clearly, then, the City of Ladue's ordinance prohibiting all political signs, rather than regulating their number, size or location, is not tailored with the precision required of regulations of speech "on the highest rung of the hierarchy of First Amendment values." *Carey*, 447 U.S. at 467.

CONCLUSION

For the foregoing reasons, the judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

Of Counsel:
ELLIOT M. MINCBERG
PEOPLE FOR THE
AMERICAN WAY
2000 M Street, N.W.
Washington, D.C. 20036
(202) 467-4999

MARC D. STERN
AMERICAN JEWISH
CONGRESS
15 East 84th Street
New York, New York 10028
(212) 879-4500

TIMOTHY B. DYK
(Counsel of Record)
BARBARA McDOWELL
DAVID J. SCHENCK

JONES, DAY, REAVIS
& POGUE
1450 G Street, N.W.
Washington, D.C. 20005
(202) 879-3939

Counsel for the Amici

December 1993